

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OPLINK COMMUNICATIONS, INC.,

Plaintiff,

v.

O-NET COMMUNICATIONS
(SHENZHEN) LIMITED, MULTIWAVE
DIGITAL SOLUTIONS, INC.,
CHUNMENG WU, an individual,

Defendants.

Case No. CV 07-4582 MJJ

**STIPULATION AND [PROPOSED] ORDER
RE FILING OF AMENDED PLEADINGS AND
WITHDRAWAL OF MOTIONS ON
CALENDAR FOR NOVEMBER 27, 2007**

STIPULATION AND [PROPOSED] ORDER
RE AMENDED PLEADINGS AND
WITHDRAWAL OF MOTIONS

CASE NO. CV 07-4582 MJJ

1 **WHEREAS**, on August 24, 2007, plaintiff Oplink Communications, Inc. (“Oplink”) filed
 2 a First Amended Complaint in this action against defendants O-Net Communications (Shenzhen)
 3 Limited (“O-Net Shenzhen”), Multiwave Digital Solutions, Inc. (“Multiwave”), and Chunmeng
 4 Wu (collectively “O-Net”);

5 **WHEREAS**, on September 17, 2007, O-Net filed its Answer and Counterclaims. O-Net
 6 Shenzhen and Multiwave concurrently filed a Motion to Dismiss and Motion to Strike [Docket
 7 No. 11] (“Motion to Dismiss”);

8 **WHEREAS**, on October 9, 2007, Oplink filed a Motion to Strike Defendants’
 9 Affirmative Defenses and Dismiss Their Counterclaims [Docket No. 19] (“Motion to Strike”);

10 **WHEREAS**, all briefing has been completed and both motions are currently on calendar
 11 for hearing before the Court on November 27, 2007;

12 **WHEREAS**, the parties have met and conferred and have consented to each party filing
 13 amended pleadings to resolve the parties’ respective motions;

14 **NOW THEREFORE**, the parties to the above-entitled action, by and through their
 15 attorneys of record, hereby stipulate as follows:

16 1. Defendants consent, pursuant to Federal Rule of Civil Procedure 15(a), to Plaintiff
 17 filing its Second Amended Complaint in the form attached as Exhibit A;

18 2. O-Net Shenzhen’s and Multiwave’s Motion to Dismiss [Docket No. 11] be taken
 19 off calendar;

20 3. Plaintiff consents, pursuant to Federal Rule of Civil Procedure 15(a), to
 21 Defendants filing their First Amended Answer and Counterclaims in the form attached as Exhibit
 22 B; and

23 4. Oplink’s Motion to Strike [Docket No. 19] be taken off calendar.

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2 Dated: November 19, 2007

WHITE & CASE LLP

3 By: /s/ Sam O'Rourke

4 Sam O'Rourke
Attorneys for Plaintiff

5 Dated: November 19, 2007

FENWICK & WEST LLP

6 By: /s/ Carolyn Chang

7 Carolyn Chang
8 Attorneys for Defendants

9 **PURSUANT TO STIPULATION, IT IS HEREBY ORDERED.**

10
11 Dated: November ___, 2007

12 _____
13 Honorable Martin J. Jenkins
14 United States District Judge

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

1 HEIDI L. KEEFE (SBN: 178960)
Email: hkeefe@whitecase.com
2 MARK WEINSTEIN (SBN: 193043)
Email: mweinstein@whitecase.com
3 SAM O'ROURKE (SBN: 205233)
Email: sorourke@whitecase.com
4

WHITE & CASE LLP

5 3000 El Camino Real
6 5 Palo Alto Square, 9th Floor
Palo Alto, CA 94306
7 Telephone: 650/213-0300
Facsimile: 650/213-8158
8

9 Attorneys for Plaintiff Oplink Communications, Inc.

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO DIVISION

13
14 OPLINK COMMUNICATIONS, INC.,

Case No. 07-4582 MJJ

15 Plaintiff,

16 v.

17 O-NET COMMUNICATIONS (SHENZHEN)
18 LIMITED; MULTIWAVE DIGITAL
SOLUTIONS, INC.; CHUNMENG WU, an
19 individual,

20 Defendants.

**SECOND AMENDED COMPLAINT
OF PLAINTIFF OPLINK
COMMUNICATIONS, INC. FOR
PATENT INFRINGEMENT, TRADE
SECRET MISAPPROPRIATION,
BREACH OF THE DUTY OF LOYALTY,
UNFAIR COMPETITION, BREACH OF
CONTRACT AND INTENTIONAL
INTERFERENCE WITH
CONTRACTUAL RELATIONS**

DEMAND FOR JURY TRIAL

21
22
23 Plaintiff Oplink Communications, Inc. submits the following First Amended
24 Complaint against defendants O-Net Communications (Shenzhen) Limited, Multiwave Digital
25 Solutions, Inc. and Chunmeng Wu and alleges as follows:

26 **PARTIES**

27 1. Plaintiff Oplink Communications, Inc. ("Oplink") is a Delaware corporation
28 with its principal place of business at 46335 Landing Parkway, Fremont, CA 94538. Oplink is a

OPLINK'S PATENTS IN SUIT

8. U.S. Patent No. 5,661,829 ("829 patent"), entitled "Optical Isolator," was duly issued by the Patent and Trademark Office on August 26, 1997.

9. U.S. Patent No. 6,215,919 ("919 patent"), entitled "Mechanical Optical Switching Device," was duly issued by the Patent and Trademark Office on April 10, 2001.

10. U.S. Patent No. 6,895,129 ("129 patent"), entitled "Optical Circulator," was duly issued by the Patent and Trademark Office on May 17, 2005.

11. All right, title and interest in the '829, '919 and '129 patents ("patents-in-suit") has been assigned to Oplink.

FIRST CLAIM FOR RELIEF

Infringement of U.S. Patent No. 5,661,829
(Against O-Net and Multiwave)

12. Oplink incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

13. O-Net and Multiwave have and continue to directly infringe the '829 patent by importing, making, using, selling, and/or offering for sale products that utilize methods and apparatuses that infringe the '829 patent.

14. On information and belief, O-Net and Multiwave have and continue to indirectly infringe the '829 patent through their contribution to, and/or intentional inducement of, infringement of the '829 patent by third parties with full knowledge of the '829 patent.

15. On information and belief, O-Net and Multiwave had pre-suit knowledge of the '829 patent and the infringement of the '829 patent by O-Net and Multiwave has been, and continues to be, with full knowledge and reckless disregard of the '829 patent, making the infringement willful.

16. By reason of the acts of infringement by O-Net and Multiwave, Oplink has suffered, is suffering and will continue to suffer damages in an amount to be proven at trial. Past and continuing infringement by O-Net and Multiwave has irreparably injured Oplink and will continue to irreparably injure Oplink absent injunctive relief.

SECOND CLAIM FOR RELIEF

Infringement of U.S. Patent No. 6,215,919
(Against O-Net and Multiwave)

17. Oplink incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

18. O-Net and Multiwave have and continue to directly infringe the '919 patent by importing, making, using, selling, and/or offering for sale products that utilize methods and apparatuses that infringe the '919 patent.

19. On information and belief, O-Net and Multiwave have and continue to indirectly infringe the '919 patent through their contribution to, and/or intentional inducement of, infringement of the '919 patent by third parties with full knowledge of the '919 patent.

20. On information and belief, O-Net and Multiwave had pre-suit knowledge of the '919 patent and the infringement of the '919 patent by O-Net and Multiwave has been, and continues to be, with full knowledge and reckless disregard of the '919 patent, making the infringement willful.

21. By reason of the acts of infringement by O-Net and Multiwave, Oplink has suffered, is suffering and will continue to suffer damages in an amount to be proven at trial. Past and continuing infringement by O-Net and Multiwave has irreparably injured Oplink and will continue to irreparably injure Oplink absent injunctive relief.

THIRD CLAIM FOR RELIEF

Infringement of U.S. Patent No. 6,895,129
(Against O-Net and Multiwave)

22. Oplink incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

23. O-Net and Multiwave have and continue to directly infringe the '129 patent by importing, making, using, selling, and/or offering for sale products that utilize methods and apparatuses that infringe the '129 patent.

1 24. On information and belief, O-Net and Multiwave have and continue to
2 indirectly infringe the '129 patent through their contribution to, and/or intentional inducement of,
3 infringement of the '129 patent by third parties with full knowledge of the '129 patent.

4 25. On information and belief, O-Net and Multiwave had pre-suit knowledge of
5 the '129 patent and the infringement of the '129 patent by O-Net and Multiwave has been, and
6 continues to be, with full knowledge and reckless disregard of the '129 patent, making the
7 infringement willful.

8 26. By reason of the acts of infringement by O-Net and Multiwave, Oplink has
9 suffered, is suffering and will continue to suffer damages in an amount to be proven at trial. Past
10 and continuing infringement by O-Net and Multiwave has irreparably injured Oplink and will
11 continue to irreparably injure Oplink absent injunctive relief.

12 **FOURTH CLAIM FOR RELIEF**

13 **Trade Secret Misappropriation Under the Uniform Trade Secrets Act**
14 **(Against Multiwave and Wu)**

15 27. Oplink incorporates by reference all preceding paragraphs of this Complaint
16 as if fully set forth herein.

17 28. Oplink competes in a highly competitive market for optical components and
18 subsystems, many of which are custom built for specific customers. To succeed, Oplink must be
19 able to provide a wide range of customized optical solutions to meet the specific needs of particular
20 customers. Over the past several years and at considerable expense, Oplink developed valuable
21 confidential information critical for succeeding in this market. This confidential information
22 includes, by way of example, technical information regarding Oplink's optical components and
23 subsystems, specifications and proposals for particular products and customers, and pricing and
24 quantity information for particular Oplink products and customers. If a competitor became aware of
25 Oplink's confidential information, it could improperly use this valuable knowledge and information
26 in its own product development, marketing and sales strategies to target Oplink's customers and
27 divert business away from Oplink.

1 29. Oplink's confidential information meets the statutory definition of a "trade
2 secret" under Civil Code section 3245.1(a). Oplink's confidential information derives independent
3 economic value from not being generally known to the public or to others who can obtain economic
4 value from its disclosure or use, and provides a substantial competitive advantage to Oplink. Oplink
5 has made and continues to make efforts that are reasonable under the circumstances to maintain the
6 secrecy of its trade secrets. These measures include, by way of example only, restricting access to
7 Oplink confidential information, requiring employees to sign stringent confidentiality agreements,
8 and placing confidentiality legends and reminders on documents that incorporate Oplink confidential
9 information.

10 30. Defendant Wu is a former employee of Oplink who began his employment
11 with the company on August 29, 2003. Upon commencement of his employment, Wu entered into a
12 valid and binding "Employee Confidential Information and Inventions Agreement" in which he
13 agreed, among other obligations, to hold Oplink's confidential and proprietary information in
14 confidence and to not remove any such confidential information from Oplink's premises. Upon
15 termination of his employment with Oplink on September 8, 2006, Wu entered into a valid and
16 binding "Separation Agreement" with Oplink in which Wu reaffirmed his continuing obligations to
17 protect Oplink's confidential and proprietary information.

18 31. During his three years with Oplink, Wu had access to extensive trade secret
19 and confidential information about Oplink's products and customers. On information and belief, Wu
20 misappropriated Oplink's trade secrets by acquiring them knowing, or having reason to know, that
21 they were acquired by improper means and in violation of his obligations to Oplink and, on
22 information and belief, by using and/or disclosing Oplink's trade secrets in an unauthorized manner
23 in violation of California Civil Code §§ 3426.1(b), 3426.2, 3426.3.

24 32. Subsequent to the termination of his employment with Oplink in September
25 2006, Wu commenced employment with Multiwave and, on information and belief, is currently
26 employed by Multiwave. On information and belief, Multiwave is the exclusive sales representative
27 for O-Net in the United States.
28

33. On information and belief, Multiwave misappropriated Oplink's trade secrets by acquiring them from Wu knowing, or having reason to know, that the trade secrets were acquired by improper means and in violation of Wu's binding confidentiality obligations to Oplink. On information and belief, Multiwave has misappropriated Oplink's trade secrets by using and/or disclosing them in an unauthorized manner in violation of California Civil Code §§ 3426.1(b), 3426.2, 3426.3.

34. As a result of the misappropriation by Wu and Multiwave, Oplink has been injured and is entitled to damages, unjust enrichment and/or a reasonable royalty in an amount to be proven at trial. The misappropriation of Oplink's trade secrets by Wu and Multiwave was and is willful and malicious, entitling Oplink to an award of exemplary damages and reasonable attorney's fees pursuant to California Civil Code §§ 3426.3(c), 3426.4.

35. The misappropriation of Oplink's trade secrets by Wu and Multiwave, unless and until enjoined and restrained by this Court, will irreparably injure Oplink's business. On information and belief, the misuse of Oplink's trade secrets by Wu and Multiwave is continuing and poses the threat of further unauthorized use or disclosure. Oplink has no adequate remedy at law. Oplink is therefore entitled to injunctive relief prohibiting Wu and Multiwave from any continued use and/or disclosure of Oplink's trade secrets and confidential information, and compelling Wu and Multiwave to return to Oplink all materials that constitute, disclose, incorporate or were derived from Oplink's trade secrets.

FIFTH CLAIM FOR RELIEF
BREACH OF DUTY OF LOYALTY
(Against Wu)

36. Oplink incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

37. Defendant Wu served as Senior Director of Business Development and Customer Support for Oplink and reported directly to the CEO. By virtue of his employment and position, Wu owed Oplink an undivided duty of care and loyalty which required, among other

1 things, that Wu refrain from using his position of trust and confidence to further private interests,
2 and to refrain from any action inimical to the best interests of Oplink.

3 38. On Wu's recommendation, on January 12, 2004, Oplink entered into an
4 Exclusive Representative Agreement with Multiwave in which Multiwave agreed to serve as a sales
5 representative for Oplink products. Multiwave had been introduced to Oplink by Wu, who on
6 information and belief had worked with Multiwave at his previous employer.

7 39. On or about May 2006, Multiwave's President approached Oplink claiming
8 that he needed to relocate to Texas for family reasons, and thus would not be able to fully serve
9 Oplink. Multiwave's President further suggested that Oplink terminate its relationship with
10 Multiwave. By letter dated May 22, 2006, Oplink informed Multiwave that the relationship would
11 be terminated effective July 1, 2006. Thereafter, Multiwave began to act as a sales representative for
12 O-Net.

13 40. On information and belief, shortly thereafter, Wu agreed with Multiwave to
14 leave Oplink and join Multiwave as an O-Net sales representative. On information and belief, for
15 the next several months, while still an Oplink employee, Wu began to act on behalf of Multiwave.
16 On information and belief, Wu used his position at Oplink to access and absorb confidential
17 information. At no time did Wu ever disclose to Oplink that he had agreed to take a job with
18 Multiwave or that he would be representing O-Net.

19 41. On information and belief, after giving notice that he was leaving Oplink, but
20 while still an Oplink employee, Wu copied and removed confidential Oplink information and data in
21 violation of his duties to Oplink.

22 42. On information and belief, after the termination of Wu's employment on
23 September 8, 2006, Wu took Oplink's confidential information to Multiwave and assumed the
24 position of sales representative for O-Net. On information and belief, Wu began and continues to
25 assist Multiwave and O-Net in competing against Oplink using Oplink confidential information.

26 43. Wu breached his duty of loyalty to Oplink as a result of the conduct alleged
27 above. As a direct and proximate result of the acts committed by Wu, Oplink has suffered damages
28 in an amount to be proven at trial. In committing the acts alleged in this complaint, Wu has acted

1 with oppression, fraud, and/or malice as defined in California Civil Code section 3294, and therefore
 2 Oplink is entitled to punitive damages in addition to actual damages.

3 **SIXTH CLAIM FOR RELIEF**

4 **Unfair Competition** 5 **(Against Multiwave)**

6 44. Oplink incorporates by reference all preceding paragraphs of this Complaint
 7 as if fully set forth herein, excluding those paragraphs that pertain specifically to the fourth cause of
 8 action for trade secret misappropriation.

9 45. Multiwave participated in and benefited from Wu's breach of his duty of
 10 loyalty to Oplink, as alleged above, and is therefore liable for unfair competition under the common
 11 law of California and California Business and Professions Code § 17200, *et seq.*

12 46. As a direct and proximate result of the foregoing acts of unfair competition,
 13 Oplink has suffered damages in an amount to be proven at trial. In committing the foregoing acts,
 14 Multiwave has acted with oppression, fraud, and/or malice as defined in California Civil Code
 15 section 3294, and therefore Oplink is entitled to punitive damages in addition to actual damages.

16 **SEVENTH CLAIM FOR RELIEF**

17 **Breach of Contract** 18 **(Against Wu)**

19 47. Oplink incorporates by reference all preceding paragraphs of this Complaint
 20 as if fully set forth herein.

21 48. On August 29, 2003, Oplink entered into a valid and binding written contract
 22 with Defendant Chunmeng Wu entitled "Employee Confidential Information and Inventions
 23 Agreement."

24 49. On September 8, 2006 Oplink entered into a valid and binding written
 25 contract with Wu entitled "Separation Agreement."

26 50. Oplink has performed all of its obligations under the "Employee Confidential
 27 information and Inventions Agreement" and the "Separation Agreement."
 28

PRAYER FOR RELIEF

WHEREFORE, Oplink prays for a judgment in its favor:

- (i) Preliminarily and permanently enjoining and restraining O-Net and Multiwave, their directors, officers, employees, agents and all persons in active concert or participation with them from importing, making, using, selling, and/or offering for sale infringing apparatuses, methods and/or services covered by Oplink's patents-in-suit;
- (ii) Preliminarily and permanently enjoining and restraining Wu and Multiwave, their directors, officers, employees, agents and all persons in active concert or participation with them from any actual or threatened misappropriation of Oplink's trade secrets or confidential information;
- (iii) Compelling Wu and Multiwave to return all materials that constitute, incorporate or disclose Oplink's trade secrets or confidential information, or were derived from Oplink's trade secret or confidential information;
- (iv) Awarding to Oplink compensatory damages, unjust enrichment and/or a reasonable royalty as provided by law;
- (v) Awarding to Oplink enhanced damages resulting from the knowing, deliberate and willful infringement by O-Net and Multiwave, pursuant to 35 U.S.C. § 284;
- (vi) Awarding to Oplink exemplary damages for the willful and malicious misappropriation of Oplink's trade secrets by Wu and Multiwave, pursuant to Cal. Civil Code § 3426.3(c);
- (vii) Awarding Oplink punitive damages under Cal. Civil Code § 3294;
- (viii) Finding that this is an exceptional case and awarding Oplink its attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285;
- (ix) Awarding to Oplink its reasonable attorneys' fees;
- (x) Awarding Oplink prejudgment interest as provided by law; and

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(xi) Such other and further relief as the Court deems just and proper.

Date: November 19, 2007

WHITE & CASE LLP

By: /s/ Heidi L. Keefe
Heidi L. Keefe
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Oplink Communications, Inc., demands a trial by jury on all issues so triable.

This the 19th day of November, 2007.

WHITE & CASE LLP

By: /s/ Heidi L. Keefe
Heidi L. Keefe
Attorneys for Plaintiff

DARRYL M. WOO (CSB NO. 100513)
dwoo@fenwick.com
HEATHER MEWES (CSB NO. 203690)
hmewes@fenwick.com
FENWICK & WEST LLP
555 California Street, 12th floor
San Francisco, CA 94104
Telephone: (415) 875-2300
Facsimile: (415) 281-1350

CAROLYN CHANG (CSB NO. 217933)
cchang@fenwick.com
MARY WANG (CSB NO. 234636)
mwang@fenwick.com
JULIE NOKLEBERG (CSB NO. 247837)
jnokleberg@fenwick.com
FENWICK & WEST LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Telephone: (650) 988-8500
Facsimile: (650) 938-5200

Attorneys for Defendants and Counterclaimants
O-Net Communications (Shenzhen) Limited,
Multiwave Digital Solutions, Inc., and
Chunmeng Wu, an individual

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Oplink Communications, Inc.,
Plaintiff,

v.

O-Net Communications (Shenzhen)
Limited,
Multiwave Digital Solutions, Inc.,
Chunmeng Wu, an individual,
Defendants.

Case No. CV 07-4582 MJJ

**DEFENDANTS' FIRST AMENDED
ANSWER TO COMPLAINT,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS**

DEMAND FOR JURY TRIAL

Date of Filing: September 17, 2006
Trial Date: None set

FIRST AMENDED ANSWER

Defendants O-Net Communications (Shenzhen) Limited ("O-Net Shenzhen"), Multiwave Digital Solutions, Inc. ("Multiwave") and Mr. Chunmeng Wu ("Wu") (collectively "Defendants") answer the Second Amended Complaint ("Complaint") of plaintiff Oplink Communications, Inc.

1 (“Oplink”), following its numbered paragraphs, as follows:

2 **Parties**

3 1. Regarding paragraph 1 of the Complaint, Defendants are informed and believe that
4 Oplink is a Delaware corporation with its principal place of business at 46335 Landing Parkway,
5 Fremont, California 94538. Defendants lack knowledge or information sufficient to form a belief
6 as to the truth or falsity of the remaining allegations in paragraph 1 of the Complaint and
7 therefore deny them.

8 2. Regarding paragraph 2 of the Complaint, Defendants admit that O-Net Shenzhen
9 is a Chinese company with its principal place of business at #10-1 South, Maqueling Industrial
10 Park, Nanshan District of Shenzhen, China. O-Net Shenzhen avers that is a leading Original
11 Equipment Manufacturer (“OEM”) and Original Design Manufacturer (“ODM”), which supplies
12 a variety of products to the global optical networking industry. Except as expressly admitted or
13 averred, the remaining allegations of paragraph 2 are denied.

14 3. Regarding paragraph 3 of the Complaint, Defendants admit that Multiwave is a
15 Texas corporation with a place of business in Fremont, California. Defendants further admit that
16 Multiwave is an exclusive sales representative for O-Net Shenzhen products sold in the United
17 States. Except as expressly admitted or averred, the remaining allegations of paragraph 3 are
18 denied.

19 4. Regarding paragraph 4 of the Complaint, Defendants admit that Wu is an
20 individual who resides within the Northern District of California. Defendants aver that Wu was
21 employed by Oplink until September 2006, and that he is a current employee of Multiwave.
22 Except as expressly admitted or averred, Defendants deny the allegations in paragraph 4 of the
23 Complaint.

24 **Jurisdiction and Venue**

25 5. Regarding paragraph 5 of the Complaint, Defendants admit that the Complaint
26 purportedly alleges claims arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et*
27 *seq.*, and the statutory and common law of the State of California.

28 6. Regarding paragraph 6 of the Complaint, Defendants admit that the Northern

1 District of California has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§
2 1331 and 1338(a), and has supplemental jurisdiction over the state law claims under 28 U.S.C.
3 § 1367(a).

4
5 7. Regarding paragraph 7 of the Complaint, Defendants admit that under 28 U.S.C.
6 §§ 1391 and 1400, venue is proper in the Northern District of California, where Wu resides and
7 Multiwave has a place of business. Except as expressly admitted or averred, Defendants deny the
8 allegations in paragraph 7 of the Complaint

9 **Oplink's Patents In Suit**

10 8. Regarding paragraph 8 of the Complaint, Defendants admit that U.S. Patent No.
11 5,661,829 ("829 Patent"), entitled "Optical Isolator," was issued by the Patent and Trademark
12 Office on August 26, 1997. Except as expressly admitted, Defendants deny the allegations of
13 paragraph 8 of the Complaint.

14 9. Regarding paragraph 9 of the Complaint, Defendants admit that U.S. Patent No.
15 6,215,919 ("919 Patent"), entitled "Mechanical Optical Switching Device," was issued by the
16 Patent and Trademark Office on April 10, 2001. Except as expressly admitted, Defendants deny
17 the allegations of paragraph 9 of the Complaint.

18 10. Regarding paragraph 10 of the Complaint, Defendants admit that U.S. Patent No.
19 6,895,129 ("129 Patent"), entitled "Optical Circulator," was issued by the Patent and Trademark
20 Office on May 17, 2005. Except as expressly admitted, Defendants deny the allegations of
21 paragraph 10 of the Complaint.

22 11. Defendants lack knowledge or information sufficient to form a belief as to the
23 truth or falsity of the allegations in paragraph 11 of the Complaint and therefore deny them.

24 **First Claim for Relief**

25 **Infringement of U.S. Patent No. 5,661,829**

26 **(Against O-Net Shenzhen and Multiwave)**

27 12. O-Net Shenzhen and Multiwave hereby incorporate by reference their responses to
28 paragraphs 1-11 of this Answer as though fully set forth herein.

13. O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 13 of the Complaint.

Second Claim for Relief

17. O-Net Shenzhen and Multiwave hereby incorporate by reference their responses to paragraphs 1-16 of this Answer as though fully set forth herein.

1 the allegations contained in paragraph 20 of the Complaint.

2 21. O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 21 of
3 the Complaint.

4 **Third Claim for Relief**

5 **Infringement of U.S. Patent No. 6,895,129**

6 **(Against O-Net Shenzhen and Multiwave)**

7 22. O-Net Shenzhen and Multiwave hereby incorporate by reference their responses to
8 paragraphs 1-21 of this Answer as though fully set forth herein.

9 23. O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 23 of
10 the Complaint.

11 24. To the extent that they can be understood, O-Net Shenzhen and Multiwave deny
12 the allegations contained in paragraph 24 of the Complaint.

13 25. Regarding paragraph 25 of the Complaint, O-Net Shenzhen and Multiwave aver
14 that prior to the receipt of the Complaint of plaintiff Oplink filed in the Central District of
15 California on August 25, 2007, they had no notice of Oplink's allegations or charges of
16 infringement, that they have not engaged in any conduct that is objectively reckless with respect
17 to the '129 Patent, and that Oplink lacks any basis to allege willful infringement on the part of O-
18 Net Shenzhen or Multiwave. Except as expressly averred, O-Net Shenzhen and Multiwave deny
19 the allegations contained in paragraph 25 of the Complaint.

20 26. O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 26 of
21 the Complaint.

22 **Fourth Claim for Relief**

23 **Trade Secret Misappropriation Under the Uniform Trade Secrets Act**

24 **(Against Multiwave and Wu)**

25 27. Multiwave and Wu hereby incorporate by reference their responses to paragraphs
26 1-26 of this Answer as though fully set forth herein.

27 28. Multiwave and Wu lack knowledge or information sufficient to form a belief as to
28 the truth or falsity of the allegations in paragraph 28 and therefore deny them.

29. Multiwave and Wu lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 29 and therefore deny them.

30. Regarding paragraph 30 of the Complaint, Wu admits that he is a former Oplink employee, that he began his employment with Oplink on or about August 29, 2003, and that he left that employ on or about September 8, 2006. Defendant Wu admits that he signed a document entitled, "Employee Confidential Information and Inventions Agreement," and a document entitled, "Separation Agreement." Except as expressly admitted, Defendant Wu denies the allegations of paragraph 30. Except as expressly admitted, Multiwave lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 30 and therefore denies them.

31. Multiwave and Wu deny the allegations contained in paragraph 31 of the Complaint.

32. Regarding paragraph 32 of the Complaint, Multiwave and Wu admit that Wu became an employee of Multiwave subsequent to his employment by Oplink and that Wu is currently a Multiwave employee. Multiwave and Wu further admit that Multiwave is an exclusive sales representative for O-Net Shenzhen products sold in the United States. Except as expressly admitted, Multiwave and Wu deny the allegations of paragraph 32.

33. Multiwave and Wu deny the allegations contained in paragraph 33 of the Complaint.

34. Multiwave and Wu deny the allegations contained in paragraph 34 of the Complaint.

35. Multiwave and Wu deny the allegations contained in paragraph 35 of the Complaint.

Fifth Claim for Relief

Breach of Duty of Loyalty

(Against Wu)

36. Wu hereby incorporate by reference his responses to paragraphs 1-35 of this

1 Answer as though fully set forth herein.

2 37. Regarding paragraph 37 of the Complaint, Wu admits that he held the title of
3 Senior Director of Business Development and Customer Support for Oplink. Except as expressly
4 admitted, he denies the allegations contained in paragraph 37 of the Complaint.

5 38. Regarding paragraph 38 of the Complaint, Wu admits that he recommended that
6 Oplink enter into a sales representation agreement with Multiwave, but avers that any decision
7 regarding whether to enter into such an agreement and its terms was made by others at Oplink.
8 Wu admits that he had previously worked with Multiwave at another employer. Except as
9 expressly admitted, Wu denies the allegations contained in paragraph 38 of the Complaint.

10 39. Wu lacks knowledge or information sufficient to form a belief as to the truth or
11 falsity of the allegations in paragraph 39 and therefore denies them

12 40. Wu denies the allegations contained in paragraph 40 of the Complaint.

13 41. Wu denies the allegations contained in paragraph 41 of the Complaint.

14 42. Wu denies the allegations contained in paragraph 42 of the Complaint.

15 43. Wu denies the allegations contained in paragraph 43 of the Complaint.

16 **Sixth Claim for Relief**

17 **Unfair Competition**

18 **(Against Multiwave)**

19 44. Multiwave hereby incorporates by reference its responses to paragraphs 1-43 of
20 this Answer as though fully set forth herein.

21 45. Multiwave denies the allegations contained in paragraph 45 of the Complaint.

22 46. Multiwave denies the allegations contained in paragraph 46 of the Complaint.

23 **Seventh Claim for Relief**

24 **Breach of Contract**

25 **(Against Wu)**

26 47. Wu hereby incorporates by reference his responses to paragraphs 1-46 of this
27 Answer as though fully set forth herein.

28 48. Wu admits that he signed a document entitled, "Employee Confidential

Information and Inventions Agreement.” Except as expressly admitted, Wu denies the allegations of paragraph 48.

49. Wu admits that he signed a document entitled, “Separation Agreement.” Except as expressly admitted, Wu denies the allegations of paragraph 49.

50. Wu lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 50 and therefore denies them.

51. Wu denies the allegations contained in paragraph 51 of the Complaint.

52. Wu denies the allegations contained in paragraph 52 of the Complaint.

Eighth Claim for Relief

Intentional Interference with Contractual Relations

(Against Multiwave)

53. Multiwave hereby incorporates by reference its responses to paragraphs 1-52 of this Answer as though fully set forth herein.

54. Multiwave lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 54 and therefore denies them.

55. Multiwave lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 55 and therefore denies them.

56. Multiwave admits that it was aware that Wu was formerly employed by Oplink and had signed agreements relating to his employment. Except as expressly admitted, Multiwave denies the allegations of paragraph 56.

57. Multiwave denies the allegations contained in paragraph 57 of the Complaint.

58. Multiwave denies the allegations contained in paragraph 58 of the Complaint.

REQUESTED RELIEF BY OPLINK

Defendants deny that Oplink is entitled to any relief

AFFIRMATIVE DEFENSES

Defendants hereby assert affirmative defenses to the Complaint as follows:

First Affirmative Defense

Failure To State A Claim

59. As a first and separate affirmative defense, Defendants allege that the Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

Second Affirmative Defense**Invalidity**

60. As a second and separate affirmative defense to Oplink's patent claims, Defendants allege that the claims of the '829 Patent, the '919 Patent and/or the '129 Patent are invalid.

61. The '829 Patent is invalid for failure to meet the Conditions of Patentability of 35 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention thereof was not patentable subject matter; or was used or known by others in this country or was patented or described by a publication before its invention; or was patented or described in a publication or was in public use or for sale more than one year before the date of the patent application; or was not invented by the named inventors; or was invented by another prior to the alleged invention; or was taught by, suggested by, and/or obvious in view of, the prior art; or is indefinite; or does not contain a proper written description; or is not enabling; or does not disclose the best mode of the invention; and no claim of the '829 Patent can be validly construed to cover any products imported, made, used, sold or offered for sale by O-Net Shenzhen and Multiwave.

62. The '919 Patent is invalid for failure to meet the Conditions of Patentability of 35 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention thereof was not patentable subject matter; or was used or known by others in this country or was patented or described by a publication before its invention; or was patented or described in a publication or was in public use or for sale more than one year before the date of the patent application; or was not invented by the named inventors; or was invented by another prior to the alleged invention; or was taught by, suggested by, and/or obvious in view of, the prior art; or is indefinite; or does not contain a proper written description; or is not enabling; or does not disclose the best mode of the invention; and no claim of the '919 Patent can be validly construed to cover any products imported, made, used, sold or offered for sale by O-Net Shenzhen and Multiwave.

63. The '129 Patent is invalid for failure to meet the Conditions of Patentability of 35 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention thereof was not patentable subject matter; or was used or known by others in this country or was patented or described by a publication before its invention; or was patented or described in a publication or was in public use or for sale more than one year before the date of the patent application; or was not invented by the named inventors; or was invented by another prior to the alleged invention; or was taught by, suggested by, and/or obvious in view of, the prior art; or is indefinite; or does not contain a proper written description; or is not enabling; or does not disclose the best mode of the invention; and no claim of the '129 Patent can be validly construed to cover any products imported, made, used, sold or offered for sale by O-Net Shenzhen and Multiwave.

Third Affirmative Defense

Damages Limited By 35 U.S.C. § 287

64. As a third and separate affirmative defense to Oplink's patent claims, Defendants allege that Oplink's claim for damages, if any, is limited by 35 U.S.C. § 287.

Fourth Affirmative Defense

Laches, Waiver, Unclean Hands and Equitable Estoppel

65. As a fourth and separate affirmative defense, Defendants allege that Oplink's patent claims are barred, in whole or in part, by the equitable doctrine of laches based on Oplink's delay with respect to its patent claims. Defendants further allege that Oplink's non-patent claims are barred in whole or in part by the equitable doctrine of waiver and equitable estoppel. Defendants further allege that Oplink's non-patent claims are barred in whole or in part by unclean hands.

Fifth Affirmative Defense

Failure to Mitigate

66. As a fifth and separate affirmative defense to Oplink's non-patent claims, to the extent Oplink has sustained any damages allegedly caused by Defendants' conduct, Oplink cannot recover all or any portion of its claims because Oplink has failed and continues to fail to exercise reasonable care and diligence to mitigate any alleged damages it has suffered as a

consequence of Defendants' actions.

Sixth Affirmative Defense

Consent and/or Acquiescence

67. As a sixth and separate affirmative defense to Oplink's non-patent claims, Defendants allege that Oplink's claims are barred on the grounds of consent and/or acquiescence.

COUNTERCLAIMS FOR DECLARATORY RELIEF

Defendants and counterclaimants O-Net Shenzhen and Multiwave respectfully allege their counterclaims against Oplink as follows:

Parties

1. O-Net Shenzhen is a Chinese company with its principal place of business at #10-1 South, Maqueling Industrial Park, Nanshan District of Shenzhen, China.

2. Multiwave is a Texas corporation with a place of business located at 44790 S. Grimmer Blvd., Suite 201, Fremont, CA 94538.

3. On information and belief, Oplink is a Delaware corporation with its principal place of business at 46335 Landing Parkway, Fremont, California 94538.

Jurisdiction and Venue

4. These are Counterclaims for a declaratory judgment arising under 28 U.S.C. §§ 2201 and 2202 and the patent laws of the United States, Title 35 of the United States Code, and authorized, *inter alia*, by Rule 13 of the Federal Rules of Civil Procedure.

5. This Court has subject matter jurisdiction of these Counterclaims pursuant to 28 U.S.C. §§ 1331, 1338, 2001 and 2202.

6. Oplink is subject to personal jurisdiction in this judicial district by virtue of its stipulation transferring Case No. SACV 07-673 AHS (MLGx) from the Central District of California to the Northern District, and because its principal place of business is located in this judicial district.

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400.

8. An actual controversy exists between O-Net Shenzhen, Multiwave and Oplink by virtue of the allegations of Oplink's Complaint and Defendants' Answer as to both the invalidity

1 and non-infringement of Oplink's '829, '919 and '129 Patents.

2 **First Counterclaim**

3 **Declaration of Non-Infringement**

4 9. O-Net Shenzhen and Multiwave hereby incorporate by reference their allegations
5 in paragraphs 1-8 of these Counterclaims as though fully set forth herein.

6 10. Oplink claims to be the owner of the entire right, title and interest in and to the
7 '829 Patent, the '919 Patent and the '129 Patent.

8 11. Oplink has charged O-Net Shenzhen and Multiwave with infringement of the '829
9 Patent, the '919 Patent and the '129 Patent.

10 12. O-Net Shenzhen and Multiwave have not and do not infringe (directly, indirectly
11 or in any other way), and are not liable as an infringer of, any claim of the '829 Patent, the '919
12 Patent and/or the '129 Patent and Oplink is entitled to no relief for any claim in the Complaint
13 for, *inter alia*, the reasons stated in Defendants' Affirmative Defenses, above, which are
14 incorporated herein by reference.

15 13. Absent a declaration of non-infringement, Oplink will continue to assert the '829
16 Patent, the '919 Patent and/or the '129 Patent against O-Net Shenzhen and Multiwave and will in
17 this way cause damage to O-Net Shenzhen and Multiwave.

18 14. O-Net Shenzhen and Multiwave thus seek a declaration that they do not infringe
19 the '829 Patent, the '919 Patent and/or the '129 Patent and are not liable as infringers.

20 **Second Counterclaim**

21 **Declaration of Invalidity of the '829 Patent**

22 15. O-Net Shenzhen and Multiwave hereby incorporate by reference their allegations
23 in paragraphs 1-14 of these Counterclaims as though fully set forth herein.

24 16. Oplink claims to be the owner of the entire right, title and interest in and to the
25 '829 Patent.

26 17. Oplink has charged O-Net Shenzhen and Multiwave with infringement of the '829
27 Patent.

28 18. The claims of Oplink's '829 Patent is invalid for failure to meet the Conditions of

Patentability specified in 35 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention thereof was not patentable subject matter; or was used or known by others in this country or was patented or described by a publication before its invention; or was patented or described in a publication or was in public use or for sale more than one year before the date of the patent application; or was not invented by the named inventors; or was invented by another prior to the alleged invention; or was taught by, suggested by, and/or obvious in view of, the prior art; or is indefinite; or does not contain a proper written description; or is not enabling; or does not disclose the best mode of the invention; and no claim of the '829 Patent can be validly construed to cover any products imported, made, used, sold or offered for sale by O-Net Shenzhen and Multiwave.

19. Absent a declaration of invalidity, Oplink will continue to assert the '829 Patent, against O-Net Shenzhen and Multiwave and will in this way cause damage to Oplink.

20. O-Net Shenzhen and Multiwave seek a declaration that the claims of Oplink's '829 Patent is invalid for failure to satisfy one or more of the Conditions of Patentability specified in 35 U.S.C. §§ 101, 102, 103 and 112.

Third Counterclaim

Declaration of Invalidity of the '919 Patent

21. O-Net Shenzhen and Multiwave hereby incorporate by reference their allegations in paragraphs 1-20 of these Counterclaims as though fully set forth herein.

22. Oplink claims to be the owner of the entire right, title and interest in and to the '919 Patent.

23. Oplink has charged O-Net Shenzhen and Multiwave with infringement of the '919 Patent.

24. The claims of Oplink's '919 Patent is invalid for failure to meet the Conditions of Patentability specified in 35 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention thereof was not patentable subject matter; or was used or known by others in this country or was patented or described by a publication before its invention; or was patented or described in a publication or was in public use or for sale more than one year before the date of the patent application; or was not invented by the named inventors; or was invented by another prior to the

1 alleged invention; or was taught by, suggested by, and/or obvious in view of, the prior art; or is
 2 indefinite; or does not contain a proper written description; or is not enabling; or does not disclose
 3 the best mode of the invention; and no claim of the '919 Patent can be validly construed to cover
 4 any products imported, made, used, sold or offered for sale by O-Net Shenzhen and Multiwave.

5 25. Absent a declaration of invalidity, Oplink will continue to assert the '919 Patent
 6 against O-Net Shenzhen and Multiwave and will in this way cause damage to Oplink.

7 26. O-Net Shenzhen and Multiwave seek a declaration that the claims of Oplink's
 8 '919 is invalid for failure to satisfy one or more of the Conditions of Patentability specified in 35
 9 U.S.C. §§ 101, 102, 103 and 112.

10 **Fourth Counterclaim**

11 **Declaration of Invalidity of the '129 Patent**

12 27. O-Net Shenzhen and Multiwave hereby incorporate by reference their allegations
 13 in paragraphs 1-26 of these Counterclaims as though fully set forth herein.

14 28. Oplink claims to be the owner of the entire right, title and interest in and to the
 15 '129 Patent.

16 29. Oplink has charged O-Net Shenzhen and Multiwave with infringement of the '129
 17 Patent.

18 30. The claims of Oplink's '129 Patent is invalid for failure to meet the Conditions of
 19 Patentability specified in 35 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention
 20 thereof was not patentable subject matter; or was used or known by others in this country or was
 21 patented or described by a publication before its invention; or was patented or described in a
 22 publication or was in public use or for sale more than one year before the date of the patent
 23 application; or was not invented by the named inventors; or was invented by another prior to the
 24 alleged invention; or was taught by, suggested by, and/or obvious in view of, the prior art; or is
 25 indefinite; or does not contain a proper written description; or is not enabling; or does not disclose
 26 the best mode of the invention; and no claim of the '129 Patent can be validly construed to cover
 27 any products imported, made, used, sold or offered for sale by O-Net Shenzhen and Multiwave.

28 31. Absent a declaration of invalidity, Oplink will continue to assert the '129 Patent

1 against O-Net Shenzhen and Multiwave and will in this way cause damage to Oplink.

2 32. O-Net Shenzhen and Multiwave seek a declaration that the claims of Oplink's
3 '129 is invalid for failure to satisfy one or more of the Conditions of Patentability specified in 35
4 U.S.C. §§ 101, 102, 103 and 112.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Defendants pray for judgment with respect to Oplink's Complaint,
7 Defendants Affirmative Defenses and above Counterclaims, and O-Net Shenzhen's and
8 Multiwave's Motion to Dismiss, or, alternatively, for a More Definite Statement and Motion to
9 Strike as follows:

10 a) Judgment on the Second Amended Complaint in favor of Defendants and against
11 Oplink;

12 b) Judgment on each Counterclaim in favor of defendants O-Net Shenzhen and
13 Multiwave and against Oplink;

14 c) Judgment declaring that the claims of the '829 Patent are not infringed by O-Net
15 Shenzhen or Multiwave and that O-Net Shenzhen and Multiwave are not liable as infringers;

16 d) Judgment declaring that the claims of the '919 Patent are not infringed by O-Net
17 Shenzhen or Multiwave and that O-Net Shenzhen and Multiwave are not liable as infringers;

18 e) Judgment declaring that the claims of the '129 Patent are not infringed by O-Net
19 Shenzhen or Multiwave and that O-Net Shenzhen and Multiwave are not liable as infringers;

20 f) Judgment declaring that the claims of the '829 Patent are invalid;

21 g) Judgment declaring that the claims of the '919 Patent are invalid;

22 h) Judgment declaring that the claims of the '129 Patent are invalid;

23 i) A declaration that Defendants' defenses and counterclaims present an exceptional
24 case entitling Defendants to, and therefore awarding, them their reasonable attorneys' fees
25 pursuant to 35 U.S.C. § 285.

26 j) An award of costs, expenses and attorneys' fees to Defendants; and

27 k) An award to Defendants of such other and further relief as this Court deems just
28 and proper.

1 Dated: November 19, 2007

FENWICK & WEST LLP

2
3 By: /s/ Darryl M. Woo
4 Darryl M. Woo

5 Attorney for Defendants and Counterclaimants
6 O-Net Communications (Shenzhen) Limited,
7 Multiwave Digital Solutions, Inc.,
8 and Chunmeng Wu, an individual

9 **DEMAND FOR JURY TRIAL**

10 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Defendants demand a trial by
11 jury on all issues so triable, including without limitation, Oplink's claims and Defendants'
12 affirmative defenses and counterclaims.

13 Dated: November 19, 2007

FENWICK & WEST LLP

14
15 By: /s/ Darryl M. Woo
16 Darryl M. Woo

17 Attorney for Defendants and Counterclaimants
18 O-Net Communications (Shenzhen) Limited
19 and Multiwave Digital Solutions, Inc., and
20 Chunmeng Wu, an individual

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO